

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1365 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

AJITRAY P AGRAVAT DECD.REP.BY RAJUBEN @ RAJSHWARI AJITRAI

Appearance:

MS KHAYATI P HATHI for Petitioners

MS SEJAL SUTARIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/12/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties.

2. Two fold contentions have been raised by the
learned counsel for the petitioners challenging legality,
propriety and correctness of the order of the 2nd Joint

Civil Judge (Senior Division), Jamnagar dated 3.5.1995 below Exh.88 in Regular Civil Suit No.698/85. First contention has been raised that the suit filed by the predecessor of the respondents was barred and reference in this respect has been made to the provisions of section 16 of the Gujarat Civil Services Tribunal Act. Next contention has been made that the deceased predecessor of the respondents has filed the suit for his promotion. Promotion is not right. Even, if it is right then it is a personal right of the deceased which vanishes with his death.

3. Learned trial court what Ms.Sejal Sutaria contended that has not committed any error in holding that the right to sue survive after the death of the plaintiff in such matter to his heirs and legal representatives.

4. Ms.Sejal Sutaria, learned counsel for the respondents in contra contended that in the court below this objection that the suit is not maintainable has not been raised.

5. It has next been contended that, whether the suit is maintainable or not, issue has already been framed by the trial court and the court will decide the same and if ultimately it decides same in favour of the defendants petitioners the suit shall be dismissed. In view of these facts what she contends that the defendants - petitioners may not be permitted to raise this contention in this civil revision application.

6. Replying to the second contention raised by Ms.Hathi learned counsel for the petitioner, learned counsel for the respondents submitted that the deceased has fundamental right of consideration for promotion. In case, on consideration his case for promotion he is found suitable then promotion is right and he would have been promoted to the higher post i.e. higher pay-scale and as a result of his death the respondents deprived of his estate and as such rightly the trial court has taken it to be a case where right to sue survive to them on the death of the plaintiff.

7. Lastly, Ms.Sutaria contends that this matter is squarely covered by the decision of this court in the case of Ibrahimbhai Karimbhai & others Vs. State of Gujarat, AIR 1968 Guj. 202. Concluding her submission, Ms.Sutaria submits that it is not the case where the court below has committed any material irregularity in exercising its jurisdiction in passing of the impugned

order which calls for interference of this court.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. Under the impugned order the learned trial court has granted the application of the respondents for impleading them as plaintiffs in the suit on the death of the original plaintiff. It is a matter where the court has granted the application and these respondents were brought on record so that the suit may continue. Whether in such matter right to sue survives or not, even if it is taken to be a question of law and findings recorded thereon are erroneous, still it may not be a case where interference of this court is called for under section 115 of the Civil Procedure Code.

10. Relying on the decision of this court, learned trial court has passed the order and I find sufficient merits in the contention of Ms.Sutaria, learned counsel for the respondents that it is not a case where this court may interfere with the order impugned in this civil revision application. In fact it is not the case where the court has to go into this legal aspect of the matter at this stage. The respondents have been impleaded as plaintiffs and defendants - petitioners have all right to raise the contention regarding survival of right to suit to them in the case. The proper course would have been to frame necessary issue and decide it on merits. It is the order whereby the respondents have been impleaded as plaintiffs in place of deceased plaintiff. Whatever observations made by the court below, are to be taken only provisional and tentative to decide the application filed by them under Order 22 Rule 3 of the Civil Procedure Code. The petitioners are free to raise all the issues in their written statement to amended plaint and the trial court then to frame the issues and decide the same in accordance with law. While deciding this issue, the court may not be influenced by the observations made and decision given under the impugned order. In view of these facts, otherwise also in case the order of the trial court is allowed to stand, it will not occasion any failure of justice and will not cause any irreparable loss to the defendants petitioners.

11. So far as other contention of the learned counsel for the petitioners is concerned, I am in full agreement with the contention of Ms.Sutaria that this may not be permitted to be raised at this stage. Issue No.4 has already been framed in the suit and court will decide the same in accordance with law and where it is held that the

suit is not maintainable, the court has all powers to dismiss the same.

12. In the result, this Civil Revision Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(pathan)